

AO 91 (Rev. 5/85) Criminal Complaint

United States District Court

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

V.

ROBERT P. BARRY

DOB: 12/12/75

(Name and Address of Defendant)

CRIMINAL COMPLAINT

CASE NUMBER:

2004 M 0466 RBC

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about December 11, 2003 in Barnstable county, in the Town of Dennis District of Massachusetts defendant (X) did, (Track Statutory Language of Offense)

after having previously been convicted of a felony punishable by a term of imprisonment exceeding one year, knowingly possessed a firearm and ammunition in or affecting interstate commerce,

in violation of Title 18 United States Code, Section (S) 922(g)(1)

I further state that I am a(n) ATF Special Agent and that this complaint is based on the following facts:
Official Title

See Attached Affidavit of Special Agent Robert J. White

Continued on the attached sheet and made a part hereof:



Yes



No



Signature of Complainant

Sworn to before me and subscribed in my presence,

JAN 26 2004

at 9:48 am

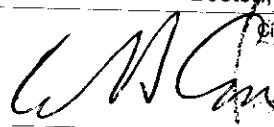
Date

Boston, Massachusetts

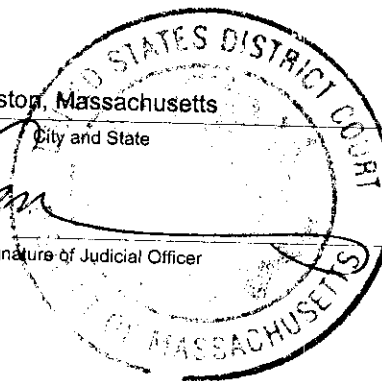
City and State

ROBERT B. COLLINGS, U.S.M.J.

Name & Title of Judicial Officer



Signature of Judicial Officer



AFFIDAVIT OF SPECIAL AGENT ROBERT J. WHITE

I, Robert J. White, being duly sworn, do state that:

1. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"). I have been an ATF Special Agent for approximately one and a half years, and during that time I have been involved in investigations of violations of federal firearm and controlled substance laws. Currently, I am assigned to a group in the Boston Field Office of ATF that, in part, works with other federal, state, and local police departments in and around the City of Boston to investigate and prosecute violations of federal firearms, explosive and controlled substance laws. Prior to becoming an ATF Special Agent, I was employed for 4 ½ years as a Border Patrol Agent with the U.S. Immigration and Naturalization Service. As a Border Patrol Agent my responsibilities included enforcement of the U.S. immigration and drug laws along the southwest border.

2. Based on my training and experience as an ATF Special Agent, I know that it is a violation of 18 U.S.C. §922(g)(1) for any person who has been convicted of a felony to possess any firearm in or affecting commerce, or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

3. I submit this affidavit in support of a criminal complaint against ROBERT P. BARRY ("BARRY"), DOB: 12/12//75, SSN:

020-66-2556, for being a felon in possession of a firearm and the twenty-nine (29) rounds of .223 caliber ammunition in or affecting commerce in violation of Title 18, United States Code, Section 922(g)(1).

4. For the past month and a half or so, I have been involved in an investigation of the activities of BARRY. The facts stated herein are based upon my own personal involvement in this investigation and my discussion with other law enforcement officers, including the Dennis, Massachusetts police officers, involved in this investigation. In submitting this affidavit, however, I have not included each and every fact known to me about the investigation, but only those facts which I believe are sufficient to establish the requisite probable cause.

5. On December 11, 2003, at approximately 3:30 p.m., Dennis Police Officer John Brady and Detective Thomas Downs proceeded to the Barnacle Motel, Room #23, in Dennis, MA, and arrested Shawn Bearse ("Bearse") and Elizabeth Gay ("Gay") on outstanding warrants.

6. After being placed under arrest and after waiving his Miranda rights, Bearse told the officers that there was a firearm concealed in the motel room, in bottom dresser drawer across from the bed. Officer Brady opened the dresser drawer and observed a Colt AR-15, .223 caliber assault rifle, serial number. Lying

beside the rifle was a thirty round capacity magazine loaded with .223 ammunition. Officer Brady noticed marking on the firearm that showed the weapon was altered to fire fully automatic.

7. Bearse told the officers that Robert BARRY had brought the Colt AR-15 rifle to his motel room for safekeeping. Bearse also stated that BARRY is very familiar with firearms and had converted the Colt AR-15 rifle to fire fully automatic.

8. Bearse agreed to cooperate with the officers by contacting BARRY to have BARRY come to the motel room to retrieve the rifle. Bearse left BARRY a message with BARRY's girlfriend, Laura Moriarty, that the rifle had to be removed from the hotel room as soon as possible. Bearse also left a couple of text messages on BARRY's cell phone. At approximately 7:35 p.m., Bearse received a text message on his cell phone from BARRY, stating that BARRY would come to the motel to retrieve the rifle from Bearse.

9. BARRY arrived at the hotel room at approximately 8:20pm. Prior to BARRY's arrival, Dennis Police Officers set up surveillance in and around the Barnacle Motel. Detective Downs secured himself in the bathroom of Room #23 when he heard a knock on the door. Detective Downs was able to hear some of the conversation between Bearse and BARRY. Detective Downs overheard Bearse tell BARRY that Bearse had to move out of the motel room

and that the Colt AR-15 was in the bottom drawer. Prior to BARRY's arrival, the firearm was made safe by the officers by removing the bolt and magazine. BARRY opened the dresser drawer and inspected the weapon. BARRY asked Bearse where the bolt and magazine were. Bearse told BARRY that he had to removed bolt and magazine to make the weapon safe. BARRY replied, stating that that was a good idea and not to worry, he had more bolts for the firearm.

10. As BARRY exited the motel room, he was placed under arrest by Officer Brady, Detective Sergeant Ben Wunderlich and Detective Garvin Kelly. BARRY was transported to the Dennis Police station, where I and Detective Sergeant Wunderlich had the opportunity to interview both BARRY and Bearse. Prior to questioning, both individuals were advised of their Miranda rights and both acknowledged they understood their rights and agreed to waive these rights.

11. Bearse stated that he knew the rifle belonged to BARRY and that he had seen it in the back seat of BARRY's vehicle on December 8, 2003. Bearse further stated that BARRY had left the firearm at the motel room because he knew that ATF was looking for him. Bearse also stated that BARRY had showed him how he had filed the inside of the frame and converted the weapon to fully

automatic. Bearse stated that BARRY had told him that he was going to attempt to sell the firearm for \$2000.00.

12. During the interview, BARRY stated that the receiver of the firearm belonged to his father, but claimed that his father was unaware that he had taken the firearm from his home. BARRY further stated that he added additional gun parts to the rifle, which came from left over parts from an Internet business he ran selling gun parts. BARRY drew a picture of what the Colt AR-15 rifle looked like when he took it from his father. BARRY also drew into the picture some of the aftermarket parts he added to the firearm.

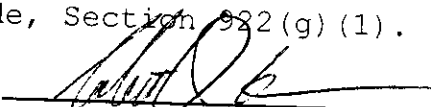
13. BARRY stated that he put the aftermarket parts on the Colt AR-15 rifle on December 8, 2003, and that he converted the rifle to fire fully automatic on December 9, 2003. BARRY further stated that he converted the weapon to fully automatic in Bearse's motel room, using a dremmel tool and a conversion kit.

14. BARRY stated the firearm would not always function fully automatic, when placed in the fully automatic setting. BARRY stated that he never fired the weapon fully automatic, but he did field-test the firearm, and it seemed to function full auto. BARRY stated that occasionally the bolt of the rifle would get caught and not function correctly after his alteration.

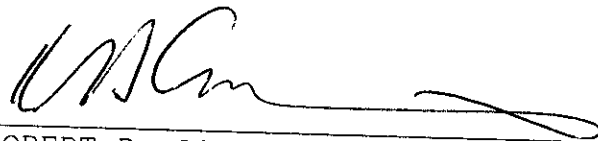
15. I obtained from the Barnstable Superior Court Criminal Clerk's Office a certified copy of conviction indicating that BARRY was convicted in March 1999 of Possession to Distribute/Manufacture Class A Heroin. I am aware that under Massachusetts law, this offense is a felony, punishable by a term of imprisonment in excess of one year.

16. Based on my own experience as an ATF Special Agent, and consultation with ATF Special Agent Angelo Thurman, a firearm interstate nexus expert, I know that the aforementioned Colt AR-15, .223 caliber, rifle, serial number SP21312, and the twenty-nine (29) rounds of .223 caliber ammunition were manufactured outside the Commonwealth of Massachusetts.

17. Based on the above, I believe probable cause exists to conclude that on or about December 11, 2003, in Dennis, Massachusetts, Robert BARRY, having been previously convicted of a felony punishable by a term of imprisonment exceeding one year, did knowingly possess a firearm and ammunition, to wit a Colt AR-15, .223 caliber, rifle, serial number SP21312, and twenty-nine (29) rounds of in or affecting interstate commerce, in violation of Title 18, United States Code, Section 922(g)(1).


ROBERT J. WHITE
Special Agent
Bureau of Alcohol, Tobacco
Firearms and Explosives

Sworn and subscribed to before me this 26 day of January
2004.

A handwritten signature in black ink, appearing to read 'RBC', followed by a long horizontal flourish.

ROBERT B. COLLINGS
United States Magistrate Judge